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TAGS: [EFIN](#) [KCRM](#) [KTFN](#) [PTER](#) [SNAR](#) [KE](#)
SUBJECT: KENYA SUBMISSION FOR INSCR PART II, MONEY
LAUNDERING AND FINANCIAL CRIMES

REF: 05 STATE 210324

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1. Per Ref A request, below is post's submission for Part II of the INSCR Report on Money Laundering and Financial Crimes. Unfortunately, there has been very little change in the conditions, laws, or policies surrounding money laundering and financial crimes (and many other issues) since last year's submission. Therefore, the text below is a lightly edited version of last year's published report on Kenya. A red-lined version has also been e-mailed to rindlerep@state.gov and Kenya Desk Officer Susie Pratt.

2. Begin Text

As a regional financial and trade center for East, Central, and Southern Africa, Kenya's economy has a large informal sector and a thriving network of cash-based, unrecorded transfers, primarily used by expatriates to send and receive remittances internationally. As such, Kenya is vulnerable to money laundering. Recently Kenya has taken steps to trace millions of dollars of public funds that were laundered abroad; corruption facilitated the removal of the money.

Section 49 of the Narcotic Drugs and Psychotropic Substance Control Act of 1994 criminalizes money laundering related to narcotics trafficking. Narcotics-related money laundering is punishable by a maximum prison sentence of 14 years, though up to now no clear instances of laundering of funds from narcotics trafficking appear to have come to light. The Central Bank is the regulatory and supervisory authority for Kenya's deposit taking institutions and has responsibility for 46 financial institutions and 93 forex bureaus. The Kenyan Parliament passed legislation at the end of 2004 strengthening the Central Bank's supervisory authority, but without specific reference to money laundering.

In October 2000, the Central Bank issued regulations that require deposit institutions to verify the identity of customers wishing to open an account or conduct a transaction. The regulations also stipulate that these institutions report suspicious transactions. Under the regulations, banks must maintain records of large transactions and report them to the Central Bank. These regulations do not cover nonbank financial institutions such as money remitters, casinos, or investment companies, and

there is no enforcement mechanism behind the regulations. Some banks do file suspicious transaction reports voluntarily, but they run the risk of civil litigation as there are no adequate "safe harbor" provisions for reporting such transactions to the Central Bank. The trigger amount is also very high: on a daily basis, all commercial banks are required to submit reports detailing all transactions greater than \$100,000. Controls on money laundering as such are rarely if ever applied to financial institutions or intermediaries outside the banking sector.

Kenya has little in the way of cross-boundary currency controls. Kenyan regulations require that any amount of cash above \$5,000 be disclosed at the point of entry or departure. In reality this provision is rarely enforced. Central Bank guidelines call for currency exchange firms to furnish reports on a daily basis on any single foreign exchange transaction above about \$10,000, and on cumulative daily foreign exchange inflows and outflows of about \$100,000. Under September 2002 guidelines, foreign exchange dealers are required to ensure that cross-border payments are not connected with illegal financial transactions.

The Banking Act amendment of December 2001 authorizes disclosure of financial information by the Central Bank of Kenya to any monetary authority or financial regulatory authority within or outside Kenya. In 2002, the Kenya Bankers Association issued guidelines requiring banks to report suspicious transactions to the Central Bank. These guidelines do not have the force of law and only a handful of suspicious transactions have ever been reported.

Kenya is a party to the 1999 UN International Convention for Suppression of the Financing of Terrorism. It has cooperated fully with the United States and the UK, but does not itself

have the investigative skills, institutional capacity, or equipment to conduct complex investigations independently. In April 2003, the GOK introduced the Suppression of Terrorism Bill into Parliament. The bill contains provisions that will strengthen the GOK's ability to combat terrorism, but the legislation is opposed by many for fear of human rights violations, not because of the bill's antiterrorism aspects as such. The public does support the government's attempts to increase transparency and to clean up corruption, which include its efforts related to money laundering. There is no legislation permitting the seizure of the financial assets of terrorists. All charitable and nonprofit organizations are registered with the Government and have to submit annual reports. Noncompliance could lead to de-registration; however, this is rarely enforced. The government did de-register some NGOs with Islamic links in 1998 in the wake of the bombing of the U.S. Embassy in Nairobi, although they were later re-registered.

Kenya is a party to the 1988 UN Drug Convention. Kenya is an active member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), a FATF-style regional body. Kenya has an informal agreement with the U.S. for the exchange of information regarding narcotics, terrorism financing, and other serious crime investigations.

At present the government entities responsible for tracing and seizing assets include the Central Bank of Kenya Banking Fraud Investigation Unit, the Kenya Police through the Anti-Narcotics Unit and the Anti-Terrorism Police Unit, and the Kenya Revenue Authority.

The passage of anti-money laundering legislation and the creation of a financial intelligence unit by Kenya will help to formalize its relationship with the U.S. and with other countries. In 2001, the Government of Kenya formed the Anti-Money Laundering Task Force with the mandate of drafting a comprehensive anti-money laundering law, sensitizing the public and government to money laundering issues, and addressing terrorist financing. The Task Force meets regularly to discuss AML issues.

After the inception of the task force, a bill on money laundering was drafted, and submitted to the Attorney General for final revision, but the November 21 Constitutional referendum delayed action. As of November 2005, the Attorney General had identified 21 other statutes that would need to be amended to be consistent with the AML bill. The Task Force has clarified issues raised by the Attorney General, and is waiting for the AG to finalize the bill and send it to the Cabinet for approval and transmission to Parliament. Although President Kibaki announced on December 7 his replacements for the Cabinet, controversy over the appointments continued. The difficulties of forming a new Cabinet, plus the President's decision to prorogue Parliament will further delay action on the bill.

The key points of the draft legislation include tracing, seizing and freezing suspect accounts, including those involved in the financing of terrorism; confiscation of the proceeds of crime, declaration of the source of funds; outlawing of anonymous bank accounts; and introduction of mandatory reporting of suspicious transactions above a certain amount. Some of the provisions regarding the financing of terrorism may be subsumed in the Suppression of Terrorism Bill discussed above. The proposed legislation is not explicit on seizing legitimate business if used to launder money. The draft legislation provides for criminal forfeiture only. Actual seizure of assets and forfeiture under current law is rare.

Once a new Cabinet is finalized and Parliament returns, Kenya should expedite the passage of its comprehensive anti-money laundering legislation and Suppression of Terrorism Bill legislation.

End text
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